(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

CRIMINAL MISCELLANEOUS APPLICATION NO. 74 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. S.G.Dessai, Senior Advocate and Mr. Menino Teles, Advocate for the Applicant.

Mr. S. R. Rivonkar, Special Public Prosecutor for the Respondent C.B.I.

CORAM : P. V. HARDAS, J.

DATE : 13TH APRIL, 2004.

P.C.:

This is an application by the Applicant against whom an offence vide Crime No.RC No.3(A)/2004/CBI/Goa registered by the Central Bureau of Investigation on 10th March, 2004, has filed the present application under Section 438 for appropriate directions of releasing him on bail in the event of his arrest in the aforesaid Crime No. The aforesaid Crime is registered for an offence punishable

under Section 120-B r/w 420 I.P.C. and Section 13(2) r/w 13(1)d) of Prevention of Corruption Act, 1988.

The offence was orginally registered against one Shri Vilas Kunkolienkar, then Branch Manager of Dena Bank, Arpora Branch, late Shri Romeo Januario Pereira, Shri Peter Pereira, resident of Palmar, Pomburpa, Goa and Smt.Vijayshri Kunkolienkar, wife of Vilas Kunkolienkar. The offence came to be registered on the basis of a complaint lodged by one Shri T. Ramesh Babu, Chief Vigilance Officer of Dena Bank. The complaint related to the fact that during the period of September, 2002 to February, 2004, the Branch Manager of Dena Bank, Arpora Branch i.e. Shri Vilas Kunkolienkar, late Romeo Januario Pereira, Peter Pereira and Smt. Vijayshri Kunkolienkar entered into a criminal conspiracy and in pursuance to the said criminal conspiracy Shri Vilas Kunkolienkar

by abusing his official position as public servant with corrupt and illegal means dishonestly and fraudulently sanctioned and disbursed demand loans to the tune of Rs.95.73 lakhs to late Shri Romeo Januario Pereira, Shri Peter Pereira and Smt. Vijayshri Kunkolienkar. The said loan was sanctioned and disbursed without taking any security. The said demand loans were siphoned off and not repaid and since they were not secured could not be recovered. Thus, Dena Bank stood cheated to the tune of Rs.95.73 lakhs.

In pursuance to the searches conducted at the residence of the said Accused, Peter Pereira is alleged to have disclosed the name of the present Applicant who is a Peon in the Agricultural Department. The information was in respect of certain transaction which the Applicant is said to have entered into in pursuance of the said

conspiracy. Ultimately, the residential house of the Applicant came to be searched and various incriminating documents including 16 passbooks of Bank Accounts in the name of the Applicant, his wife etc. and 8 accounts in the name of the other family members were recovered. Certain pay slips towards the deposit of cash and various accounts were also recovered. Documents in respect of purchase of immovable property and Maruthi van had also been seized in the search. On the basis of this, the allegation is that the Applicant had withdrawn the defrauded amount and which has a direct nexus with the amount siphoned off from the Dena Bank and in connivance with the other Accused.

The Applicant had filed Bail Application No.98/2004 which by Order dated 26th March, 2004, came to be dismissed by the learned Sessions Judge, North Goa, Panaji,

on the ground that the offences committed by the Applicant fall in the category of "white collar crimes" and as these types of offences are committed by meticulous and pre-planned manner, the learned Sessions Judge, North Goa, Panaji, declined to grant bail under Section 438 of the Criminal Procedure Code to the Accused.

The other Accused namely Peter Pereira, Vilas Kunkolienkar and his wife Vijayshri Kunkolienkar had filed similar applications in this Court which came to be withdrawn on 5th April, 2004. Meanwhile, this Court while granting time to the learned Special Public Prosecutor for filing his reply, had directed the Applicant to attend the Police Station to enable the Investigating Officer to interrogate the Applicant. This direction was at the instance of the Prosecution. Undisputedly, the Applicant was interrogated on two occasions by the

Investigating Officer.

This application was heard yesterday and was adjourned at the request of the learned Special Public Prosecutor for the Respondent to state whether the principal Accused has been arrested. Accordingly, Mr. S. N. Rivonkar, learned Special Public Prosecutor states that Shri Vilas Kunkolienkar and Peter Pereira have been arrested by the C.B.I. today at 1.30 p.m.

Bail is opposed on the ground of seriousness of the allegations on the basis of material collected during the investigation which unerringly points the finger towards the involvement of Accused. Bail is also opposed on the ground that custodial interrogation of the Applicant is imperative for "likely recovery" and "to know the involvement of other persons in the fraud and to establish the quid pro quo".

I have heard Mr.S.G.Dessai, learned Senior Counsel appearing on behalf of the Applicant and Mr. S. R. Rivonkar, learned Special Public Prosecutor appearing on behalf of the Respondent. It is no doubt true that while the Court is called upon to decide an application under Section 438 of the Criminal Procedure Code, the paramount consideration is (i) the seriousness of the allegations levelled against the Accused. (ii) the need or necessity of custodial interrogation of the Accused. In the present case, undoubtedly, the allegations are of serious nature. The allegations pertain to siphoning off the funds of Dena Bank to the tune of Rs.95.73 lakhs or so. However, that alone is not the factor to decide the present application. Undisputedly, the residential premises of the Applicant have been raided and certain incriminating documents have been seized. It is not alleged that the Applicant is in

possession of other documents which could not be located during the search and hence a custodial interrogation is imperative for the recoveries. It is true that after the arrest when an Accused is produced before the Magistrate and a remand is obtained, the question of granting Police custody remand and the reasons for the same would not be the same while considering the need for custodial interrogation in an application under Section 438 of the Criminal Procedure Code. However, broadly speaking, the Court should not go by mere ipse dixit of the prosecution when it states that custodial interrogation of the Applicant is necessary or imperative. In the present case, relevant documents have been seized during the raid of the premises of the Applicant and no further documents remained to be seized showing the involvement of the Applicant in the Crime. Custodial interrogation of the Applicant is

prayed for on the ground that he is not telling the truth. Such vague grounds of seeking custodial interrogation of an Accused are not sufficient to warrant the rejection of an application under Section 438 of the Criminal Procedure Code. In this peculiar case, the name of the Accused is disclosed by a co-Accused.

In view of the peculiar facts of the case, I am not impressed by the submission on behalf of the Respondent that custodial interrogation of the Applicant is essential. Custodial interrogation of the Applicant has not been requested for on the ground of advancing the investigation of the prosecution case further or the denial of which would hamper the same in the sense would lead to virtually dead end. In the circumstances stated by me above, Criminal Miscellaneous Application No.74 of 2004 is allowed. The

Applicant is directed to be released on bail in the event of his arrest in Criminal Miscellaneous Application referred to above on the Applicant furnishing a PR Bond in the sum of Rs.25,000/- with one surety in the like amount on the condition that the Applicant should not leave the State of Goa without the prior permission of this Court while deciding the trial. The Applicant shall attend the Office of the Central Bureau of Investigation everyday from 10.00 a.m. to 5.00 p.m. initially for a period of one week and thereafter, shall attend as and when required. The Applicant shall not either directly or indirectly influence the witnesses or tamper with the evidence.

Criminal Miscellaneous Application allowed accordingly.

P. V. HARDAS, J.

RD.